

Construction contractors incur Use Tax on the cost price of the tangible personal property they permanently affix to real estate. See Section 130.2075. (This is a GIL.)

May 3, 2005

Dear Xxxxx:

This is to acknowledge receipt of your letter of January 26, 2005, which was forwarded to our attention. In your letter you have stated and made inquiry as follows:

The VILLAGE needs your help. We have found inconsistencies in the way in which some local retailers have applied sales tax to installed products. Some retailers are not charging sales tax on installed products when they should.

For instance, carpeting has specific tax exemption when installed by a contractor. However, we found some stores that did not charge sales tax when the carpet was delivered from out of state to a retail purchaser and not to a contract installer.

In addition, we found stores that were not charging sales tax on other installed products, like washers, dryers and refrigerators. They seem to have extended the installed product exemption for carpet to other installed products. We believe this is clearly a violation of the law.

The state is responsible for enforcing sales tax collection. We have notified the Illinois Department of Revenue of the problem and they said they would investigate; however, to date, we are unaware of any action being taken by them.

Any help you may give us in getting the Illinois Department of Revenue to investigate the matter and report their findings to us would be greatly appreciated.

We rely on the state to fairly and accurately collect these revenues. If they do not enforce the laws the village and the taxpayers lose out.

As we explained in our letter to PERSON in his capacity as attorney for the VILLAGE (see attached copy), the precise nature of the contractual relationship between a purchaser and a seller must be examined in order to determine the proper tax liability for sales of carpet and certain appliances. As that letter points out, there are situations in which a retailer may sell an appliance that he is contractually obligated to permanently affix to the customer's real estate. In this case, the customer will not incur any tax liability. Instead, the retailer acts as a construction contractor, and incurs Use Tax on his cost price of the item. This can be contrasted with situations in which a retailer sells an item, such as a washer or dryer, that retains its character as tangible personal property (e.g., it is not permanently affixed to real estate). In the latter instance, Retailers' Occupation Tax liability will be incurred by the retailer, and the purchaser would incur a corresponding Use Tax liability. The retailer would also incur Home Rule Municipal Retailers' Occupation Tax liability, if applicable.

We believe our Audit Division is in the best position to determine compliance, given the fact intensive nature of these issues. As we indicated in our letter, we have forwarded the information you provided to our Audit Division for follow-up. Because of the confidentiality provisions of Section 11 of the Retailers' Occupation Tax Act, however, we are prohibited from sharing specific audit information with you. Please note, however, that the Department's audits of home improvement-type stores are ongoing and have generally demonstrated compliance with the tax laws. If, however, you possess specific factual information clearly demonstrating noncompliance, we would be happy to investigate further.

I hope that this information has been helpful. You may access our website at www.iltax.com to view the regulations referenced in our earlier letter and to research previous letter rulings regarding these types of transactions.

Sincerely,

Jerilynn Troxell-Gorden
Deputy General Counsel, Sales & Excise Tax